



COMMONWEALTH OF KENTUCKY
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OAG 17-013

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Subject: Whether The Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, and the regulations adopted thereunder, generally pre-empt local regulation of mobile and/or manufacture home parks enacted under KRS Chapter 100.

Requested by: Hon. David K. West, Jessamine County Judge Executive

Written by: Sam Flynn

Syllabus: The Act and its implementing regulations are not in conflict with county zoning ordinances that prescribe standards that are as stringent as or more stringent than the state standard in accordance with KRS 67.083.

Statutes construed: KRS 67.083 KRS Chapter 100, KRS 219.310-410.

OAGs cited: OAG 79-258.

Opinion of the Attorney General

Jessamine County Judge Executive David K. West requested an opinion of this office as to whether the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.310-410, ("the Act") and the regulations adopted thereunder,¹ pre-empt local regulation of mobile and/or manufacture home parks under KRS Chapter 100. Although this Opinion does

¹ Judge Executive West specifically references 902 KAR 15.010.

not speak directly to the Jessamine County's zoning ordinances,² we generally find that ordinances are consistent with the Act, to the extent they prescribe the same or more stringent standards, under to KRS 67.083(6).

Pursuant to KRS 67.083(3)(k)³ a county fiscal court has the authority to enact ordinances and issue regulations in the area of "[p]lanning, zoning, and subdivision control according to the provisions of KRS Chapter 100." KRS 100.201, 100.203, and 100.207, enable city, county, urban-county and metro governments to consider and adopt zoning regulations. KRS 67.083(6) specifically governs the relationship between county and state regulation of the same area - including planning, zoning, and subdivision control under KRS Chapter 100. KRS 67.083(6) provides the following:

(6) If a county is authorized to regulate an area which the state also regulates, the county government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation:

(a) If the state statute or administrative regulation prescribes a *single standard of conduct*, a county ordinance is consistent if it is identical to the state statute or administrative regulation;

(b) If the state statute or administrative regulation prescribes a *minimal standard of conduct*, a county ordinance is consistent if it establishes a standard which is the same as or more stringent than the state standard...⁴

(Emphasis added).

² This Office was not provided a copy of the local zoning ordinances for Jessamine County.

³ KRS 67.083(3) provides:

The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in performance of the following public functions

⁴ See e.g., OAG 79-258 (pursuant to KRS 67.083(6) a county may enact an ordinance pertaining to junk yards which is more restrictive than the state statute).

902 KAR 15:010 provides state standards of conduct for mobile home parks. Specifically, Section 3 of the regulation provides "Location and General Layout Standards," including the minimum size of each recreational space, the minimum distance between vehicles, minimum distance between each vehicle and the public streets, highway right-of-ways, and community property lines, as well as minimum widths for community streets. *See* 902 KAR 15:010, Section 3(5)-(7) and (10). Because the 902 KAR 15:010, Section 3 provides minimal state standards of conduct in these areas, the county may establish ordinances which are more stringent than the state standards, pursuant to KRS 67.083(6). Notably, KRS 219.360(5) also expressly contemplates that local zoning regulations may place additional requirements on mobile home communities.

(5) A permit to construct, alter, or operate a community does not relieve the applicant from securing a local building permit if required, or from complying with any *local zoning or other legal requirements*.

(Emphasis added).

Accordingly, we find that county ordinances are not in conflict with the provisions of 902 KAR 15:010 setting minimal standards of conduct, to the extent the ordinances prescribe standards that are as stringent or more stringent than the state standard.

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Sam Flynn', is written over the printed name and title of the Assistant Attorney General.

Sam Flynn
Assistant Attorney General